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10
11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13

14 IN RE:

15 **STANLEY THOMAS LUND AKA**
16 **LUND MORTGAGE, INC. and JUNE**
17 **MARIE LUND,**

18 Debtors.

19 **Chapter 7 Proceeding**

20 **Case No. 2:09-bk-18416-CGC**

21 **Adv. Proc. No. 2:09-ap-01577-CGC**

22 **DEBTOR'S REPLY TO PLAINTIFF'S**
23 **RESPONSE TO RULE 59 MOTION TO**
24 **RECONSIDER**

25 **COME NOW**, Debtors, Stanley Thomas Lund and June Marie Lund, by and
26 through their counsel, Joseph W. Charles, P.C., and Reply to the Plaintiff's Response to
27 the Rule 59 Motion to Reconsider.

28 **I. Propriety of the Rule 59 Motion.**

Plaintiff alleges that the relief requested may not be granted based on Rule 59 of
the Federal Rules of Civil Procedure. However, Courts have recognized Motions to
Reconsider under Rule 59. See Stangel v United States (In re Stangel) (1995, CA5
Tex) 68 F3d 857, 34 CBC2d 540, CCH Bankr L Rptr P 76696, 33 FR Serv 3d 1015, reh
den (1996, CA5 Tex) 1996 US App LEXIS 1762; Britt's Home Furnishing, Inc. v
Hollowell (In re Hollowell) (1999, BC ND Ga) 242 BR 541; In re Morrison (1982, BC ND
Ohio) 26 BR 57.

II. Analysis under Rule 60.

1 Contrary to the Plaintiff's position, analysis under Rule 60 of the Federal Rules of
2 Civil Procedure is not limited to subsection (b)(2) only. If the Court chooses to analyze
3 the Debtor's request under Rule 60, it may do so under other subsection (b) grounds
4 such as (b)(6) "any other reason that justifies relief."

5 Here, it is understandable how the Court may have been confused about the
6 distributions to Mr. Lund from the company. Admittedly it is strange that the checks
7 contain the memo in question and that he was paid in both a W-2 and a K-1. However,
8 given the consistent testimony from Mr. Lund, his bookkeeper, and now his accountant
9 Mr. Lund should at least be given the opportunity to fully explain himself to the Court.
10 This would be in the best interest of justice. The trial will have to proceed in any event
11 and a few simple questions to Mr. Lund about the company's finances would not create
12 a large burden for the Court or waste inordinate amounts of time.
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16 **WHEREFORE**, Debtors respectfully request the Court deny the granting of
17 partial Summary Judgment.

18 **RESPECTFULLY SUBMITTED** this 27TH day of August 2010.

19 **JOSEPH W. CHARLES, P.C.**
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21 By: /s/ Joseph W. Charles
22 Joseph W. Charles
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1 An ORIGINAL of the foregoing was filed
2 with the U.S. Bankruptcy Court
3 and a COPY was mailed this 27th day
of August 2010, to:

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9 United States Trustee
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11 /s/ C. Short
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EXHIBIT 1

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EXHIBIT 2

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EXHIBIT 3